



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: HU/16798/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11<sup>th</sup> December 2019**

**Decision & Reasons Promulgated  
On 17th December 2019**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**MR SHAHAN [D]  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Miss J Howorth, Duncan Lewis & Co Solicitors

For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of Iraq. On 11<sup>th</sup> April 2018, he was notified that s32(5) of the UK Borders Act 2007 places a duty on the respondent to make a deportation order against him unless he can demonstrate that one or more of the specified exceptions set out in s33 of the Act, apply to him. The respondent noted that the appellant is a foreign criminal who has been sentenced to a period of

imprisonment of at least 12 months and as such, his deportation is conducive to the public good. In response, the appellant made representations dated 27<sup>th</sup> April 2018 setting out why he should not be deported. On 15<sup>th</sup> August 2018 the respondent refused a human rights claim made by the appellant. The appellant's appeal against that decision was dismissed for the reasons set out in the decision of First-tier Tribunal Judge Lawrence ("the judge") promulgated on 21<sup>st</sup> August 2019.

### The decision of First-tier Tribunal Judge Lawrence

2. The judge summarises the appellant's immigration and criminal history at paragraphs [2.1] to [2.9] of his decision. The judge heard evidence from the appellant and his partner, Ms [S].
3. The judge considered the appellant's relationship with Ms [S] at paragraphs [58] to [68] of his decision. At paragraph [66] of his decision, the judge accepted that there was no obvious lack of credibility in the oral evidence given by Ms [S]. At paragraph [67], the judge refers to a letter that is to be found at page 11 of the appellant's bundle in which the appellant describes an incident that appears to have taken place in or about 2015 when he claims that he and his girlfriend '[M]', were attacked in their home while they were sleeping. The judge noted the account set out in that letter did not sit easily with the claim that the appellant and Ms [S] had become romantically involved in 2011 and that they were engaged to marry in 2015. The judge noted that Ms [S]'s claimed lack of knowledge of the appellant's relationship with '[M]' had emerged in her oral evidence, and could suggest a lack of knowledge on Ms [S]'s part of the appellant's lifestyle at the time, and the level of commitment to Ms [S] on the part of the appellant at the time. At paragraph [68], the judge stated:

"Considering the evidence in the round, and bearing in mind the approach I consider that I ought to take to the appellant's evidence, I consider that the appellant has established to the

appropriate standard that he enjoys a genuine relationship of marriage with Ms [S] that engages the family life limb of Article 8 of the ECHR, but I find that the duration of that genuine relationship, and therefore the family life, is relatively short, having existed only since they were married in 2018.”

4. The judge addressed the Article 3 claim at paragraphs [69] to [73] of the decision. At paragraphs [70] to [72], the judge states:

“70. It was conceded by the respondent in AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 00212 (IAC), a person who does not possess a CSID and is unable to obtain one, would face a real risk of destitution in all parts of Iraq such that Article 3 ECHR would be engaged. The Upper Tribunal in AAH found moreover that a person without a CSID would be likely to face significant obstacles in trying to make the journey between Baghdad and the Iraqi Kurdish Region (IKR), Baghdad being considered to be the destination to which the Respondent would remove a returnee who is of Kurdish ethnicity and who did not originate from the IKR, and the IKR being considered a place to which such a returnee might reasonably relocate to avoid a breach of Article 3 ECHR and/or other rights, such that he would not otherwise be lawfully returnable.

71. The difficulty with the Appellant’s case that he would not be able to obtain a CSID is that he has failed to adduce evidence that is capable of discharging the burden on him of establishing that he could not do so. As is indicated at 2.7.15 of the CPIN, the onus is on the appellant to provide documentary evidence to substantiate his claim that he is unable to obtain the necessary documentation, for example by letter from the Iraqi Embassy confirming what was submitted by the person to verify their identity but that their identity and/or documentation could not be confirmed or issued.

72. Following the guidance in AAH, the assessment of whether an Iraqi national returnee could obtain a new CSID at all, or within a reasonable timeframe, will include the consideration of such factors as whether he has any other form of documentation, information about the location of his entry in the civil register, the location of the relevant civil registry office and whether it remains operational. The appellant has not adduced evidence in relation to the utility of the form of identification he is known to possess, described as ‘Iraqi identity cards’ in the appellant’s bundle index, he has not explained why the information he has about his National Identity Card in Iraq would be insufficient to be able to locate his entry in the register (see 7.37 of the screening interview record at A13 of the respondent’s bundle) and he has not evidenced whether the registry office in his home area is operational. He relies on his ethnicity and religious denomination and the claimed lack of family or contacts in Iraq, but those are not determinative factors under the country guidance or the respondent’s policy.”

5. The judge found at [73], that the appellant has not established that he would be unable to obtain a CSID, whether before or after his deportation to Iraq. The Judge found that the appellant deportation would not be in breach of Article 3.
6. Having considered the Article 8 and Article 3 claims, the judge referred to the relevant statutory considerations set out in Part 5 of the Nationality, Immigration and Asylum Act 2002. The judge noted that the appellant has not been sentenced to a period of imprisonment of four years or more, and thus the public interest requires his deportation unless Exceptions 1 or 2 set out in s117C(4) and (5) of the 2002 Act apply. The Judge found, at [78], that Exception 1 does not apply to the appellant because the appellant has not been lawfully resident in the United Kingdom for most of his life. As to Exception 2, the judge stated at [81]

“I do not consider that the evidence before me establishes that the deportation of the appellant to Iraq would have an unduly harsh effect on Ms [S]. I have found that the duration of her proven genuine and mutually committed relationship with the appellant is relatively short, having existed since they were married in 2018, which is a period of around one year only. There are no established factors that would suggest that her separation from the appellant by the deportation would have unduly harsh consequences for her. Exception 2 does not therefore apply to the appellant.”

### The appeal before me

7. The appellant advances three grounds of appeal. Permission to appeal was granted by First-tier Tribunal Judge Kelly on 28<sup>th</sup> October 2019. The matter comes before me to determine whether the decision of the judge is infected by a material error of law, and if so, to remake the decision.
8. Miss Howorth adopted the grounds of appeal in her submissions before me. First, in considering whether the deportation of the appellant would be in breach of Article 3, she submits, the judge has failed to properly apply the relevant country guidance, and in so far as the

judge deviates from that country guidance, he does so without giving reasons for adopting that course. Miss Howorth submits the judge does not adequately address whether the appellant can obtain a CSID in his home area by reference to the Country Guidance. She accepts the appellant has the identity documents that are referred to at paragraph [72] of the decision, but, she submits, the appellant does not know the volume or page relating to his or her family, and there is no finding by the judge of any patrilineal family in Iraq that could assist. The appellant confirmed in his screening interview that the only remaining family that he has in Iraq is a sister, but the judge fails to make any finding as to whether the appellant has any family in Iraq.

9. Miss Howorth submits that although it is correct that there was no evidence as to whether the registry office in the appellant's home area is operational, it is clear from the country guidance in AAH, (at paragraph 13) that the town from which the appellant comes, is one from which tens of thousands of Kurdish civilians were displaced with their homes and shops being allegedly looted and destroyed by Gol troops. She submits the area is one of the worst in Iraq, and the information available is indicative as to whether the civil registry office is likely to be operational. Miss Howorth submits that although the judge refers to the country guidance, the judge fails to properly apply the country guidance.
10. Second, the judge failed to consider whether the appellant faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive. Miss Howorth submits the Article 15(c) risk was referred to in the appellant's skeleton argument, and the issue is not addressed at all by the judge in his decision.
11. Finally, the judge repeatedly highlights that the burden is on the appellant, but the standard of proof applied in reaching the decision,

is not apparent. The appellant cites the approach adopted by the Judge to the evidence regarding the relationship between the appellant and Ms [S]. Miss Howorth submits the judge accepted there was no obvious lack of credibility in the evidence given by Ms [S], but contrary to her evidence and the evidence in the form of photographs of the couple dating back a considerable time, found that the duration of the relationship is relatively short, and has only existed since they were married in 2018. She submits it is far from clear that the judge considered the Article 8 claim on a balance of probabilities, and the Article 3 claim to the lower standard.

12. In reply, Ms Fijiwala submits there are no material errors of law in the decision of the FtT. She submits the judge properly directed himself at paragraph [70] onwards, to the country guidance decision in AAH and the CPIN that were set out in the appellant's bundle. She refers to headnote 1(i) in AAH that states:

1. *Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. Factors to be considered include:*
  - i) *Whether P has any other form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process should be straightforward. A laissez-passer should not be counted for these purposes: these can be issued without any other form of ID being available, are not of any assistance in 'tracing back' to the family record and are confiscated upon arrival at Baghdad;*

13. Ms Fijiwala submits the judge properly addresses the matter at paragraph [72] of the decision. The judge was entitled to consider the fact that the appellant has an Iraqi identity card. She submits that is a form of documentation that would be capable of assisting the appellant secure a CSID. She submits in AAH, at paragraph 29, the Tribunal noted the evidence of Dr Fatah that a person could delegate the task of attending the office of the civil registrar to a relative or

trusted friend, assuming of course that he was in possession of the relevant documents and/or information. Alternatively, Dr Fatah agreed that it was theoretically possible that a person could engage a lawyer and grant him or her power of attorney. Ms Fijiwala submits it was open to the judge on the evidence before the Tribunal, and properly applying the country guidance, to find that the appellant has failed to establish that he would not be able to obtain a CSID before or after his deportation to Iraq, and his deportation would not therefore be in breach of Article 3.

14. Ms Fijiwala accepts there is no express reference in the decision of the FtT to any Article 15(c) risk. She submits that is immaterial because the CPIN 'Iraq: Security and humanitarian situation, version 5.0 of November 2018', that was in the appellant's bundle confirms that the security situation has changed since the decision in AAH. She refers to paragraph 2.3.10 of the CPIN which confirms that "*According to the IOM, as of August 2018, nearly 4 million people have returned to their home areas, a continuing upward trend, particularly to ... Salah al-Din ..., explained by improvements in the security situation, although there is some secondary displacement....*".
15. Finally, Ms Fijiwala submits that although the Judge does not refer to the standard of proof, the judge properly considered all the evidence. The judge addresses the concerns that he had regarding the duration of the relationship between the appellant and Ms [S], at paragraph [67]. The judge accepted the relationship, and in the end, it was open to the Judge to conclude that he did not consider the evidence establishes that the deportation of the appellant to Iraq would have an unduly harsh effect on Ms [S].

### Discussion

16. Although there is some force in the submissions made by Ms Fijiwala, upon a careful reading of the decision of the FtT judge, I am satisfied that there is a material error of law in the decision.

17. The appellant is from Tuz Khurmatu, a town in Salah al-Din. As to the assessment of the risk upon return, it is correct that AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) as amended by the Court of Appeal in AA (Iraq) [2017] EWCA Civ 944, confirmed that there is a state of internal armed conflict in certain parts of Iraq, involving government security forces, militias of various kinds, and the Islamist group known as ISIL. The intensity of this armed conflict in the so-called "contested areas", comprising *inter alia* Salah al-Din, is such that, as a general matter, there are substantial grounds for believing that any civilian returned there, solely on account of his or her presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive.
18. The Court of Appeal stated that regardless of the feasibility of the person's return, it will be necessary to decide whether the person has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq. A CSID is generally required in order for an Iraqi to access financial assistance from the authorities; employment; education; housing; and medical treatment. In the subsequent decision in AAH, section C of Country Guidance annexed to the Court of Appeal's decision in AA (Iraq) was supplemented with the following guidance:
- "1. Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. Factors to be considered include:
- i) Whether P has any other form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process should be straightforward. A laissez-passer should not be counted for these purposes: these can be issued without any other form of ID being available, are not of any assistance in 'tracing back' to the family record and are confiscated upon arrival at Baghdad;
  - ii) The location of the relevant civil registry office. If it is in an area held, or formerly held, by ISIL, is it operational?

- iii) Are there male family members who would be able and willing to attend the civil registry with P? Because the registration system is patrilineal it will be relevant to consider whether the relative is from the mother or father's side. A maternal uncle in possession of his CSID would be able to assist in locating the original place of registration of the individual's mother, and from there the trail would need to be followed to the place that her records were transferred upon marriage. It must also be borne in mind that a significant number of IDPs in Iraq are themselves undocumented; if that is the case it is unlikely that they could be of assistance. A woman without a male relative to assist with the process of redocumentation would face very significant obstacles in that officials may refuse to deal with her case at all.

19. Headnote 1(i) of AAH follows from what is said in paragraph [24] of AAH;

"An individual who is without a CSID must therefore obtain one as a matter of urgency. In his main report Dr Fatah sets out means by which this might be possible. The ideal would be production of an old or damaged CSID. This would enable the Registrar to quickly and easily locate your family record in the ledger. Absent a CSID or copy thereof there are a number of other ways in which the Registrar could locate an individual's details. If that individual had an Iraqi passport, an INC or a PDS card these could all be used to 'track back' through layers of bureaucracy in order to locate the original record."

20. Although the judge refers to the relevant country guidance, the judge does not appear to have undertaken the fact specific analysis required to establish whether the appellant is able to obtain a new CSID within a reasonable timeframe. Although it is correct that the appellant has some form of Iraqi identity card, that does not appear to be one of the documents identified in headnote 1(i) of AAH as being a document that would be of substantial assistance and a document that would mean the process should be straightforward.
21. The judge simply states that the appellant has not evidenced whether the registry office in his home area is operational, without having regard to the background material and what is said about Salah al-Din, in the country guidance. The judge does not make any findings as to the family that the appellant may have in Iraq, and the assistance that he may be able to seek either from family, or as Ms

Fijiwala submits, by engaging a lawyer and granting him or her power of attorney.

22. I have in mind the importance of having a CSID particularly where, on the basis of the Country Guidance as it is, the appellant would be at risk in his home Governorate and may be unable to enlist family assistance. Cogent reasons must be given for a departure from Country Guidance. The judge might well have been mindful of the change in the security situation as set out in the CPIN, but the difficulty is that the judge does not in fact address the security situation or the Article 15(c) risk at all, and gives no reasons for preferring anything that is said in the CPIN to that set out in the country guidance.
23. In considering the Article 3 claim the judge does not identify the standard of proof that he has applied. Although the decision should be read on the assumption that, unless he has demonstrated the contrary, the judge knew how he should perform his functions and the standard of proof to be applied, upon a careful reading of the decision I cannot be satisfied that the judge applied the lower standard in his assessment of the Article 3 claim.
24. Having carefully considered the decision of the FtT judge, I am persuaded by Ms Howorth that the judge has failed to properly apply the relevant country guidance and in any event, as Ms Fijiwala accepts, has failed to have any regard to the Article 15(c) risk upon return in reaching his decision. In my judgment, the decision of the FtT contains a material error of law and should be set aside. As I cannot be satisfied that the judge applied the proper standard of proof to the issues he was considering, in my judgement the appropriate course is for the decision to be set aside with no findings preserved.
25. I must then consider whether to remit the case to the FtT, or to re-make the decision myself. Having considered paragraph 7.2 of the

Senior President's Practice Statement of 25<sup>th</sup> September 2012, the nature and extent of any judicial fact-finding necessary will be extensive. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

**NOTICE OF DECISION**

- 26. The decision of First-tier Tribunal Judge Lawrence promulgated on 21<sup>st</sup> August 2019 is set aside.
- 27. The appeal is remitted to the First-tier Tribunal for rehearing, with no findings preserved.

Signed \_\_\_\_\_ Date 12<sup>th</sup> December 2019  
Upper Tribunal Judge Mandalia

**TO THE RESPONDENT**  
**FEE AWARD**

I have remitted the matter to the FtT for hearing afresh and there can be no fee award.

Signed \_\_\_\_\_ Date 12<sup>th</sup> December 2019  
Upper Tribunal Judge Mandalia